

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

AMANDA PIERRE,
by her parent Louise Pierre,

Plaintiff,

-against-

**NEW YORK CITY DEPARTMENT OF
EDUCATION and CITY OF NEW YORK,**

Defendants.

**PLAINTIFFS RESPONSE TO
DEFENDANTS MOTION TO
DISMISS**

07 Civ. 6270 (DLC)

-----X

I am Sanford S. Stevens, an attorney licensed to practice in the State of New York and before the United States District Court for the Southern District of New York.

1. I am a sole practitioner representing the plaintiff, Amanda Pierre, by her parent, Louise Pierre. I am familiar with the matters set forth herein based upon my personal knowledge.
2. This case stems from state administrative proceedings initiated under the Individuals with Disabilities Education Act ("IDEA").
3. I personally appeared at the City of New York, Office of Corporation Counsel located at 100 Church Street in Manhattan and filed a copy of the Petition to Review Order of State Review Officer at the window.
4. The clerk informed me that they are authorized to receive legal documents on behalf of the City of New York and the Department of Education. The clerk stamped my copy "City of New York, Law ...(illegible)..., Office of C...(illegible), 2007 Jul 9 am 10:00".
5. Contrary to paragraph 4 of the Declaration of defendant's counsel, the Petition to Review Order of State Review Officer was stamped "07 CV 6270, JUDGE COTE" by the clerk at the United States District Court for the Southern District of New York. A copy of the Petition to Review Order of State Review Officer is attached hereto as Exhibit 1.

Page two

6. On February 29, 2008 I appeared at the City of New York, Office of Corporation, Counsel, Communications Section to ask them to read to me the illegible portion of the July 9, 2007 stamp. The clerk informed me that the stamp said "CITY OF NY LAW DEPART, OFFICE OF CORP. COUNSEL, COMMUNICATIONS SECTION" as well as the date and time received. The clerk also informed me that they normally stamp "EDUCATION" in red ink just below the time/date but that the red ink is frequently not visible on copies. The communications clerk provided a sample stamp, which is attached as Exhibit 2

7. A few days prior to July 9, 2007 I personally appeared at the cashier's window at the United States District Court for the Southern District of New York and inquired whether a Petition or a Summons would be required to commence this type of action. The clerks conferred and advised me to file a Petition.

8. On July 9, 2007 I personally filed the Petition at the cashier's window and proceeded to 100 Church Street to file the petition on the defendants.

CONCLUSIONS

9. Plaintiffs believe that the Petition to Review Order of State Review Officer was the proper procedure for commencing this action.

10. On July 9, 2007 the defendants were notified of the commencement of this action.

11. On July 9, 2007 the defendants were served with the Petition.

12. Assistant Corporation Counsel, Toni Gantz, appeared before this court and stated that she represented the defendants.

We ask the court find that the defendants were properly notified of this action and timely served so that this matter can proceed on its merits.

Page three

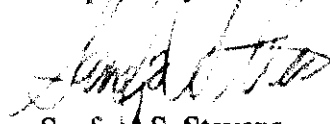
Plaintiffs request that Defendants Motion to Dismiss be denied.

Alternatively, plaintiffs request that the court offer the plaintiffs the opportunity to cure any defects it may find.

I declare that the statements herein are correct to the best of my knowledge.

DATED:

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Sanford S. Stevens", is written over the printed name.

Sanford S. Stevens
Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07

CV

6270

JUDGE COTE

AMANDA PIERRE, by her parent,
Louise Pierre,

PETITION TO REVIEW
ORDER OF STATE
REVIEW OFFICER

Petitioners,

DEPARTMENT OF EDUCATION
CITY OF NEW YORK,

Respondents.

Your Honor:

JUL 09 2007

U.S.D.C. S.D.N.Y.
CASHIERS

2007 JUL 9 PM 10 00

Petitioner, by its attorney, Sanford S. Stevens, requests the court to review the decision of the State Review Officer which overruled the Finding of Fact and Decision of the Impartial Hearing Officer assigned to hear this matter.

1. Amanda Pierre, is a child with disabilities, and as such is covered by the Individuals with Disabilities Act ("IDEA").
2. On October 6, 2006 the Committee on Special Education ("CSE") met to discuss the needs of Amanda. The recommendations were not educationally appropriate for Amanda.
3. On October 13, 2007 Amanda requested an impartial hearing as provided by the IDEA.
4. On October 16, 2007 the Department of Education ("DOE") challenged the request as insufficient.
5. On October the Impartial Hearing Officer ruled that the request for an impartial hearing was sufficient.
6. On November 16, 2007 the DOE mailed their recommended placement to Amanda.
7. The DOE admits that this recommended place was not appropriate for Amanda. They termed the recommended placement a mistake.

Page two

8. On December 6, 2007 the DOE made a second recommended placement for Amanda for the school year, which had started the previous September.
9. An Impartial Hearing was held on January 11, 2007 and again on February 14, 2007.
10. At the hearings 5 medical providers plus 2 educators testified that the parent's placement of Amanda at Winston Prep was appropriate.
11. The parent of Amanda informed the Impartial Hearing Officer that Amanda had attended Winston Prep for the academic years 2005-2006 as well as 2006-2007.
12. Only 1 witness, a social worker, testified on behalf of the DOE's second recommended placement.
13. The social worker witness for the DOE had only briefly met Amanda at Winston.
14. The Impartial Hearing Officer found that the DOE failed to offer Amanda a Free Appropriate Public Education ("FAPE") within the time required by law.
15. The Impartial Hearing Officer also found that Winston Prep offers Amanda an appropriate educational program and ordered the DOE to pay for Amanda's tuition at Winston Prep. Exhibit 'A'
16. On April 17, 2007 the DOE appealed the decision of the Impartial Hearing Officer with the New York State Education Department.
17. On May 11, 2007 Amanda offered to attend a hearing with the New York State Review officer.
18. On May 24, 2007 the Office of State Review denied Amanda's request.
19. On June 13, 2007 the State Review Officer overruled the Impartial Hearing Officer's Findings of Fact and Decision and annulled her decision in its entirety. Exhibit 'B'

Page three

**THE DECISION OF THE STATE REVIEW OFFICE SHOULD BE SET ASIDE
FOR THE FOLLOWING REASONS**

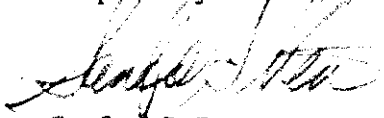
20. The Impartial Hearing Officer found that the request for an impartial hearing met the sufficiency standard required. Amanda believes that the request was sufficient, but even if deemed insufficient, Amanda should not be deprived of the protections of the IDEA.
21. Amanda had every right to rely upon the decision of the Impartial Hearing Officer as to sufficiency.
22. The impartial hearing is the proper forum where all issues are heard and should be adjudicated by the impartial hearing officer.
23. The IDEA is a protection of the rights of a disabled child. In this case the DOE is attempting to use the statute to shield them from their responsibility to offer an appropriate placement for Amanda.

WHEREFORE,

Amanda Pierre request this court to set aside the decision of the state review officer and reinstate the Findings of Fact and Decision of the Impartial Hearing Officer, or otherwise permit Amanda to pursue her claim.

DATED: July 2007

Respectfully submitted,



Sanford S. Stevens
SANFORD S. STEVENS, PC
Attorney for Amanda Pierre
244 Madison Avenue (#303)
New York, New York 10016
(212) 228 - 7273 (phone/fax)

CITY OF N.Y. LAW DEPART.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS SECTION

2008 FEB 29 PM 4 04

Exhibit 2